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Motion to Advance.

SUPREME COURT OF THE UNITED STATES.

Filed April 30, 1900.

OCTOBER TERM, 1899.

ISAAC M. MASON,
Plaintiff in Error,

vs.

STATE OF MISSOURI EX REL., JAMES McCAFFERY, LAWRENCE M. KINGSLAND AND GEORGE J. KOBUSH,
Defendants in Error,

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ERROR TO SUPREME COURT OF MISSOURI.

MOTION TO ADVANCE CAUSE AND NOTICE THEREOF.

BENJ. SCHNURMACHER,
GEO. D. REYNOLDS,
NOBLE & SHIELDS,
MORTON JOURDAN,
Attorneys for Plaintiff in Error.

St. Louis Law Printing Co., 311—315 Locust St., Phone: Main 1819A

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In the Supreme Court of the United States,

October Term, 1899.

Isaac M. Mason, Plaintiff in Error,

vs.

The State of Missouri, *ex rel.*, James McCaffery, Lawrence D. Kingsland and George J. Kobush, Defendants in Error.

In Error to the Supreme Court of Missouri.

Notice of Motion to Advance.

To the Above Named Defendants in Error, and Hon. E. C. Crow, Attorney-General of Missouri, and Hon. William J. Stone, Their Attorneys of Record:

You are hereby notified that, at the opening of the Supreme Court of the United States, at the City of Washington, District of Columbia, on Monday next, April 30, 1900, or as soon thereafter as counsel can be heard, we will present to said court a motion to advance the above entitled cause on the docket, and for an early hearing thereof, for the reasons stated in the said motion, a copy of which is hereto annexed.

Benj. Schumacher,
Geo. P. Howell,
Noble C. Butler,
Morton Jourdan,
Attorneys for Plaintiff in Error.

St. Louis, April 23, 1900.

due service of the within notice is admitted, and we join prayer to have cause advanced for an early hearing.

W. J. Stone,
For Defendants in Error.

April 23, 1900.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

ISAAC M. MASON,
Plaintiff in Error,
vs.
STATE OF MISSOURI EX REL., JAMES McCAFFERY, LAWRENCE M. KINGSLAND AND GEORGE J. KOBUSH,
Defendants in Error,

Motion to Advance.

IN ERROR TO THE SUPREME COURT OF MISSOURI.

Now comes Isaac M. Mason, plaintiff in error in the above entitled cause, and moves the Court to advance said cause on the docket and set the same for hearing and argument at the earliest day the Court can find time to hear the same.

The matter involved in said cause, briefly stated, is the validity and constitutionality of a pretended act of the General Assembly of the State of Missouri, approved June 19, 1899, entitled, "An Act to provide for the registration of voters in cities now having, or which hereafter may have 300,000 inhabitants, or more; to provide for the creation of a Board of Election Commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses, and providing penalties

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therefor, and prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith."

It was claimed by plaintiff in error in the Supreme Court of the State of Missouri, in which Court said suit was brought as an original proceeding in mandamus, and will be claimed by him in this Court, that said act was not passed by the General Assembly of the State of Missouri in accordance with the constitutional provisions of said State relating to and governing the passage of bills, and the enactment of laws, and was therefore and is not now a valid enactment—and the decision of said Supreme Court was against said claim.

It was further claimed and is now claimed, that even if said act was passed in a constitutional manner, it was and is in conflict with Section 53, of Article 4, of the Constitution of the State of Missouri, in that it is a special and local law regulating the affairs of the City of St. Louis, alone; that it is a special law for the opening and conducting of elections and fixing and changing the places of voting, and creating offices and prescribing the powers and duties of officers in the City of St. Louis alone and in the election districts thereof, and that it violates that part of said section which provides that "in all cases where a general law can be made applicable, no local or special law shall be enacted; and whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject."

It was and is claimed that, being a local and special Act, it was not passed as required by Section 54 of Article 4 of said Constitution.

It was and is claimed that it violates Section 5 of Article 8 of said Constitution, which ordains that "the General

Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000, inhabitants and not exceeding 100,000, but not otherwise."

On each and all of said claims the decision of said Court was against plaintiff in error.

It was further claimed in said Court in said cause, and is now here claimed, that said law violates the first section of the Fourteenth Amendment of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States, and denies to persons within the jurisdiction of said State the equal protection of the laws; and the said claim was denied by said Supreme Court.

In deciding said cause adversely to plaintiff in error, the Supreme Court of said State decide against a right claimed by plaintiff in error under the Constitution of the United States, and did abridge the privileges and immunities of citizens of the United States, and did deny to persons within the jurisdiction of the State of Missouri the equal protection of the laws.

It was and is claimed by plaintiff in error that said decision of the Supreme Court of Missouri in said cause, in sustaining said law as valid, does deprive plaintiff in error of the equal protection of the laws.

It was and is claimed that said Act, and the decision sustaining it, makes one law and rule of action for the citizens of Missouri residing in the City of St. Louis, and another and different rule and right for citizens of Missouri residing outside of said city, and deprives the citizens of Missouri residing in the City of St. Louis of rights, privileges and immunities granted to citizens of Missouri residing outside of said city, and denies them the equal protection of the laws, and this claim was denied, and the decision was adverse to plaintiff in error.

For reasons for this application to advance said cause, plaintiff in error assigns the following:

A general election will be held in the State of Missouri,

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and City of St. Louis, said city having a population of over 300,000 inhabitants, and being the only city in the State having that many inhabitants or more, on Tuesday, November 6, 1900, for the election of presidential electors, congressmen and all State officers. There are three Congressional Districts included in the City of St. Louis; the total vote cast for presidential electors in said city at the last national election was 106,996, and the total vote of the State was 673,906. At the ensuing election it will probably be increased about 12 per cent.

The question involved in this case, being as stated, whether the Act of June 19, 1899, before cited, is valid and constitutional, or not, it is of the highest moment to have that determined before such election is held; for if the contention of plaintiff in error is correct, and is sustained by this Honorable Court, then the acts of the persons who claim appointment under said law, as registration and election officers, would be void; the office which they claim, having no existence in law, they would not be *de facto* officers (see Norton v. Shelby County, 118 U. S. 425; *loc. cit.* 442), and the election would fail.

If the contention of plaintiff in error is sustained, then the officers who should conduct such election and the registration therefor, are those heretofore appointed and claimed by plaintiff in error to be now in office under an Act of the General Assembly of the State of Missouri, approved May 31, 1895, entitled: "An Act to create a Board of Election Commissioners in cities now having, or which hereafter may have over 100,000 inhabitants; to provide for the appointment of the same; to define the duties of such board; to provide for the registration of all voters in such cities to govern elections therein, defining offenses and providing punishments thereof; prescribing penalties for violating the provisions of this Act; and abolishing the office of Recorder

and Deputy Recorder of Voters," and its amendments. The Act of June 19, 1899, purported to repeal the Act last cited, and to abolish the offices created by it, and it is not claimed that defendants in error are the successors in office of those appointed under the act of May 31, 1895, nor is it claimed that they have any office, or right to office save under the Act of June 19, 1899. Therefore, if said act is void as unconstitutional, their acts as registration and election officers would be absolutely void, and any election held thereunder would also be void.

Such a result would affect the right of three congressmen from the State of Missouri; it would affect the election of presidential electors from the State of Missouri, who, under the law of that State, are chosen by the people on a general ticket, and not by districts, and it would affect the title of all the State officers of the State of Missouri, and especially of all those in the City of St. Louis, which is a municipality, and not in a county, and elects, at said election, three judges of its Circuit Court, a sheriff, circuit attorney, and other State officers.

To prevent the great confusion and complications, and possible menace to the peace of the whole nation, which would follow if the election is held under an invalid law, or under one which is in such serious and grave doubt, it is of the utmost, highest importance that the question as to the validity of said law be passed on in advance of such election, and at the earliest date possible.

The interests not only of the people of the City of St. Louis, and State of Missouri, but of those of the United States are, therefore, largely involved in this question, and consideration of public order and public safety, it is respectfully urged, requires its speedy determination.

Finally, it is respectfully urged, that the questions presented in and by said suit are of great public interest and

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concern, and involve the proper and legal exercise of the right of suffrage of more than 125,000 voters in said city directly, as also the vote of the State for its own officers, and in the Electoral College, and is, therefore, of vital importance to the City of St. Louis and its inhabitants, as well as to the people of the State, and of the United States.

Wherefore plaintiff in error earnestly and respectfully moves that the hearing of said cause be advanced.

ISAAC M. MASON,
Plaintiff in Error.

BENJ. SCHNURMACHER,
GEO. D. REYNOLDS,
NOBLE & SHIELDS,
MORTON JOURDAN,
Attorneys for Plaintiff in Error.

State of Missouri, } ss.
City of St. Louis. }

ISAAC M. MASON, being duly sworn, says he is plaintiff in error in the above cause; that he has read the foregoing motion, and that the matters therein stated are true; that it is not made for mere vexation, but in good faith and for the reason therein stated. He further says that said cause was first decided by the Supreme Court of Missouri, on March 13, 1900; that within the time given by the rules of said Court, he filed a motion for rehearing, which was decided adversely to him on the 27th of March, 1900; that as soon as counsel could make up the assignment of errors, and perfect a bond, affiant applied for writ of error to the Supreme Court of the United States, which was approved by the Chief Justice of theSupreme Court of the State of Missouri, on April 7, 1900, and plaintiff in error at once ordered a transcript of the record to be made up; that the same was not completed and submitted to his counsel for inspection until April 20, 1900, and that said counsel

did not complete examination of same until April 21, 1900, when it was transmitted to the Clerk of this Honorable Supreme Court of the United States, and is now on file therein.

ISAAC M. MASON,
Plaintiff in Error.

Subscribed and sworn to before me this 23d day of April, 1900.
My commision as Notary expires September 21 1900

Walter B. Dryden
Notary Public, City of St. Louis, Mo.